

§ 26.50

24 CFR Subtitle A (4–1–08 Edition)

§ 26.50 Appeal to the Secretary.

(a) Except as otherwise set forth in paragraph (b) of this section, either party may file with the Secretary a petition for review within 30 days after the ALJ issues an initial decision. The Secretary or designee may extend the 30-day period for good cause. If the Secretary or designee does not act upon the petition for review within 90 days of its service, then the initial decision shall become final.

(b) Appeals of Program Fraud Civil Remedies Act decisions (24 CFR part 28). Only the respondent may file a petition for Secretarial review. The petition must be filed within 30 days after the ALJ issues the initial decision. The Secretary or designee may extend the 30-day period for good cause. If the Secretary or designee does not act upon the petition for review within 30 days of its service, then the initial decision shall become final.

(c) *Brief in support of petition.* The petition for review shall be accompanied by a written brief, not to exceed 10 pages, specifying exceptions to the initial decision and reasons supporting the exceptions.

(d) *Service.* The party submitting the petition for review shall serve a copy of the petition and brief in support of the petition on the other parties and on the Chief Docket Clerk.

(e) *Forwarding of the record.* Upon request by the Office of the Secretary, the ALJ shall forward the record of the proceeding to the Secretary or designee.

(f) *Brief in opposition.* Any opposing party may file a brief opposing review, not to exceed 10 pages, within 20 days of receiving the petition for review and accompanying brief. The brief in opposition shall be served on all parties.

(g) *Additional briefs.* If the petition is granted, then the Secretary or designee may order the filing of additional briefs.

(h) There is no right to appear personally before the Secretary or designee.

(i) There is no right to appeal any interlocutory ruling by the ALJ.

(j) In reviewing the initial decision, the Secretary or designee shall not consider any objection that was not raised before the ALJ unless a dem-

onstration is made of extraordinary circumstances causing the failure to raise the objection.

(k) The Secretary or designee shall consider only evidence contained in the record forwarded by the ALJ. However, if any party demonstrates to the satisfaction of the Secretary or designee that additional evidence not presented at the hearing is material and that there were reasonable grounds for the failure to present such evidence at such hearing, the Secretary or designee shall remand the matter to the ALJ for consideration of such additional evidence.

(l) The prohibitions of ex parte contacts in § 26.30 shall apply to contacts with the Secretary or designee.

(m) The Secretary or designee may affirm, reduce, reverse, compromise, remand, or settle any relief granted in the initial decision. The Secretary or designee shall consider, and include in any final determination, such factors as may be set forth in applicable statutes or regulations.

(n) The Secretary or designee shall promptly serve each party to the appeal with a copy of his or her decision and a statement describing the right to seek judicial review.

(o) *Judicial review.* A party must generally file a petition for judicial review within 20 days of service of the Secretary's determination, or the Secretary's determination shall become final and not subject to judicial review. In Program Fraud Civil Remedies Act matters (24 CFR part 28), the respondent shall have 60 days from the date that the determination is sent to the respondent in which to file a petition. See also § 26.52.

§ 26.51 Exhaustion of administrative remedies.

In order to fulfill the requirement of exhausting administrative remedies, a party must seek Secretarial review under § 26.50 prior to seeking judicial review of any initial decision issued under subpart B of this part.

§ 26.52 Judicial review.

Judicial review shall be in accordance with applicable statutory procedures and the procedures of the appropriate Federal court. The Government